



October 4, 1999

Ms. Sharon Alexander
Attorney
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR99-2802

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128322.

The Texas Department of Health (the "department") received a written request for "all contracts between the Department of Health and Birch & Davis . . . including all amendments and modifications thereof and all schedules, exhibits and attachments thereto." You do not contend that the requested information is excepted from required public disclosure, but rather have requested a decision from this office pursuant to section 552.305 of the Government Code. Consequently, this office notified representatives of Birch & Davis Health Management Corporation ("Birch & Davis") that we received your request for an open records decision regarding their contract with the department. In our letter to Birch & Davis, this office requested that they provide an explanation as to why portions of the contract were excepted from public disclosure, with the caveat that their failure to do so within a reasonable time would result in this office instructing the department to disclose the information.

Representatives of Birch & Davis timely responded to our notice. In their response, however, Birch & Davis's only contention regarding the requested information is that this office has previously ruled that the information is excepted from required public disclosure pursuant to section 552.110 of the Government Code. In Open Records Letter No. 98-2458 (1998), this office concluded that certain information that Birch & Davis had submitted to the department in connection with a Request For Proposals is excepted from public disclosure under section 552.110 of the Government Code as "trade secret" information. *See also* Open Records Letter No. 99-0531 (1999) (affirming ORL 98-2458).

It is not apparent to this office, however, whether the information at issue here is the same as that at issue in Open Records Letter No. 98-2458. The department must withhold the requested information from the current requestor in accordance with Open Records Letter

No. 98-2458, but only to the extent that the information at issue here is *precisely* the same information upon which this office has previously ruled. See Gov't Code § 552.301(a) (briefing not necessary where attorney general made previous determination that information is excepted from public disclosure).

On the other hand, if the information at issue here differs from the information this office ruled upon in Open Records Letter No. 98-2458, we have no basis for concluding that the information comes within any of the exceptions to required public disclosure because Birch & Davis has made no additional arguments for withholding the new information. If such is the case, we conclude that the requested information must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William M. Walker
Assistant Attorney General
Open Records Division

WMW/RWP/nc

Ref.: ID# 128322

cc: Mr. Marc Shivers
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